



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

April 1, 1996

Mr. Kevin McCalla  
Director  
Legal Division  
Texas Natural Resource Conservation Commission  
P.O. Box 13087  
Austin, Texas 78711-3087

OR96-0471

Dear Mr. McCalla:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 39337.

The Texas Natural Resource Conservation Commission (the "Commission") received a request for copies of "the offer of ENVIRON, the evaluation scores, and notes and comments of the evaluators" that pertain to proposals submitted in response to the Commission's request for offer for Future-Year Boundary Conditions for Urban Airshed Modeling. You assert that certain documents that contain notes of an individual who evaluated the proposals are excepted from required public disclosure pursuant to sections 552.103 and 552.104 of the Government Code. These notes document the evaluator's *opinions and thoughts regarding the two submitted proposals.*

Section 552.104 excepts from required public disclosure "information that, if released, would give advantage to a competitor or bidder." This exception is most commonly applied to protect information submitted to a governmental body in response to a competitive bidding notice or request for proposals. It may also protect from disclosure information related to the bidding process that is not part of a bid. *See* Attorney General Opinion MW-591 (1982). The purpose of the exception is to prevent one bidder from gaining an unfair advantage over others. *See* Open Records Decision No. 541 (1990). Generally, section 552.104 does not except bids from public disclosure after bidding is completed and the contract has been awarded. *See id.* However, information may continue to be withheld from disclosure during the period in which the governmental body

seeks to clarify bids and bidders remain at liberty to furnish additional information. See Open Records Decision No. 170 (1977).

You inform us that one of the bidders is protesting the award of the contract. You also say that based on the bid protest, the Commission "is reevaluating the proposal review process regarding this contract. Should the evaluation reveal that the initial evaluation was conducted improperly, the [Commission] will be required to take remedial action or to void the existing contract and submit a new request for offer." Based on this representation, we cannot conclude that the bidding process is completed.

You assert that "a bidder possessing information regarding [the Commission's] evaluation of the two original proposals would have an advantage over other bidders with respect to a remedial action or new proposal." We have reviewed the documents at issue and conclude that their release would be advantageous to the recipient bidder. Accordingly, we conclude that the Commission may withhold the requested information from required public disclosure based on section 552.104 of the Government Code.<sup>1</sup>

Having determined that the Commission may withhold the requested information from disclosure pursuant to section 552.104, we need not consider your section 552.103 claim at this time. We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Guajardo  
Assistant Attorney General  
Open Records Division

KHG/ch

Ref.: ID# 39337

Enclosures: Submitted documents

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<sup>1</sup>Section 552.104 does not except this information after the contract is awarded. See Open Records Decision No. 514 (1988).

cc: Mr. Marshall J. Doke, Jr.  
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(w/o enclosures)